



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CAUSE NUMBER 815 OF 2016

BETWEEN

DOCK WORKERS UNION [K].....CLAIMANT

VERSUS

KENYA PORTS AUTHORITY....RESPONDENT

RULING

1. The Claimant Union filed its Statement of Claim on 14th October 2016. The issue in dispute is indicated in the Statement of Claim to be: “unlawful withholding of bonus payment due to the Grievants.”

2. The Grievants are described at paragraph 3 of the Statement of Claim to be “ covered in the list on diverse dates, 2nd July 2015, 29th September 2015 and 30th September 2015,”

3. The Claimant alleges that the Respondent declared payment of bonus to all staff for the financial year 2014/2015 as a result of positive performance. The Grievants were dismissed from employment on diverse dates stated at paragraph 2 above. Bonus payment became due on 30th June 2015 when all the Grievants were in employment.

4. The Claim against the Respondent is for:-

i. Declaration that bonus payment is due to the Grievants.

ii. The Respondent is compelled to pay bonus.

iii. Costs to the Claimant.

5. The Respondent has filed a Notice of Preliminary Objection dated 25th January 2019. The main ground is that the matter is *res judicata*.

6. The Objection was argued on 21st March 2019.

The Court Finds:-

7. The Parties agree there was a Claim, Cause Number 448 of 2015 which involved some of the Grievants and the Respondent. The Claim was determined both upon Trial and Appeal.

8. Another related Claim, Cause Number 451 of 2015, involved the Claimant Union and the Respondent. In a ruling made on 8th March 2018, the Court found the Claim to be *res judicata*, underlining that the only variation was that the Claims were presented either by the Employees in their own names or through the Claimant Union.

9. The same trend is shown in the current Claim. Same or some Grievants in previous Claims, are now back in Court, represented by the Claimant Union.

10. The record will show that on 16th November 2016, proceedings herein were stayed, pending the outcome of Appeal No. 53 of 2016. That order was made because that Appeal would have a bearing on the current litigation.

11. Bonus payment as claimed would be part of the terminal benefits payable to the dismissed Employees. The Court in Cause No. 448 of 2015 ordered that all terminal benefits be paid to the particular Claimants, who were Members of the Claimant Union. If there is bonus to be paid, it would have to be considered as part of the terminal benefits mentioned in Cause Number 448 of 2015. The Claimant Union should not bring truncated Claims to Court, and neither should a section of its Members do so, based on the same set of facts. The Claimant had the opportunity to amend its Pleadings in previous Claims, or join proceedings where it was not a Party, to ventilate the pursuit of bonus, as soon as it was known that there was bonus payment declaration. If an Employee's contract is terminated, terminal benefits ought to be claimed once, not separately, through a multiplicity of suits.

12. Lastly, bonus is paid at the discretion of the Employer. It is incentive based, and forward-looking. If an Employee has been dismissed on disciplinary grounds, does bonus remain payable? The Respondent's Board declared payment of bonus on 23rd August 2016, to all staff. The Grievants were not in employment at the time. Does the Employer have an obligation to incentivize persons who are no longer in employment? The Court does not think so.

13. The Court is satisfied that the Claim is improperly before it.

IT IS ORDERED: -

a) The Claim is dismissed.

b) No order on the costs.

Dated and delivered at Mombasa this 20th day of June, 2019.

James Rika

Judge